

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

IN RE: ALLERGAN BIOCELL  
TEXTURED BREAST IMPLANT  
PRODUCTS LIABILITY LITIGATION

Plaintiff: Erika Olinger

Case No.:

MDL NO. 2921

Honorable Brian R. Martinotti  
District Court Judge

Honorable Joseph A. Dickson  
Magistrate Judge

MASTER SHORT-FORM  
COMPLAINT FOR PERSONAL  
INJURIES, DAMAGES AND  
DEMAND FOR JURY TRIAL

1. Plaintiff, Erika Olinger, hereby state and incorporate by reference all of the allegations contained in Plaintiffs' Master Long Form Complaint for Personal Injuries, Damages and Demand For Jury Trial ("Master Complaint") as permitted by Case Management Order No. 17 for cases filed directly into this district.
2. In addition to the below-indicated portions of the Master Complaint adopted by the plaintiff(s) and incorporated by reference herein, Plaintiff hereby alleges as follows:

**IDENTIFICATION OF PLAINTIFFS AND RELATED INTERESTED  
PARTIES**

3. Name and current residence of individual who is alleged to have suffered personal injuries and related damages due to implantation of one or more Biocell Textured Breast Implant medical devices ("Biocell"):

Erika Olinger

4. Consortium Claim(s): Name and current residence of individual(s) alleging damages for loss of consortium:

None

5. If a survival and/or wrongful death claim is asserted:

Name and residence of Decedent when she suffered Biocell-related injuries and/or death:

Not applicable

Name and current residence of the individual(s) bringing the claims on behalf of the decedent's estate, and status (i.e., personal representative, administrator, next of kin, successor in interest, etc.):

Not applicable

### **VENUE**

6. Plaintiff[s] allege that venue for remand and trial is proper in the following federal judicial district:

United States District Court for the Eastern District of Louisiana

### **DEVICE IDENTIFICATION**

7. [Plaintiff/Decedent] used the following Biocell device[s], which Plaintiff contends caused her injury(ies). Check all that apply and provide all dates of implant and explant:

|   |   |
|---|---|
| <input type="checkbox"/> <b>NATRELLE Silicone-filled Breast Implants</b><br><input type="checkbox"/> Style 110<br><input type="checkbox"/> Style 115<br><input type="checkbox"/> Style 120<br><br><b>Date[s] of Implant:</b><br><br><b>Date[s] of Explant (if any):</b>   | <input type="checkbox"/> <b>NATRELLE Saline-Filled Breast Implants</b><br><input type="checkbox"/> Style 163<br><input type="checkbox"/> Style 168<br><input type="checkbox"/> Style 363<br><input type="checkbox"/> Style 468<br><br><b>Date[s] of Implant:</b><br><br><b>Date[s] of Explant (if any):</b>   |
| <input checked="" type="checkbox"/> <b>NATRELLE 410 Highly Cohesive Anatomically Shaped Silicone-Filled Breast Implants</b><br><input type="checkbox"/> Style LL<br><input type="checkbox"/> Style LM<br><input type="checkbox"/> Style LF<br><input type="checkbox"/> Style LX<br><input type="checkbox"/> Style ML<br><input type="checkbox"/> Style MM<br><input checked="" type="checkbox"/> Style MF<br><input type="checkbox"/> Style MX<br><input type="checkbox"/> Style FL | <input type="checkbox"/> <b>NATRELLE INSPIRA Silicone-Filled Breast Implants</b><br><input type="checkbox"/> Style TRL<br><input type="checkbox"/> Style TRLP<br><input type="checkbox"/> Style TRM<br><input type="checkbox"/> Style TRF<br><input checked="" type="checkbox"/> Style TRX<br><input type="checkbox"/> Style TSL<br><input type="checkbox"/> Style TSLP<br><input type="checkbox"/> Style TSM<br><input type="checkbox"/> Style TSF<br><input type="checkbox"/> Style TSX<br><input type="checkbox"/> Style TCL |

|  |   |
|--|---|
| <input type="checkbox"/> Style FM<br><input type="checkbox"/> Style FF<br><input type="checkbox"/> Style FX<br><br><b>Date[s] of Implant:</b> August 26, 2015<br><br><b>Date[s] of Explant (if any):</b><br>September 11, 2019   | <input type="checkbox"/> Style TCLP<br><input type="checkbox"/> Style TCM<br><input type="checkbox"/> Style TCF<br><input type="checkbox"/> Style TCX<br><br><b>Date[s] of Implant:</b><br><br><b>Date[s] of Explant (if any):</b>  |
| <input type="checkbox"/> <b>McGhan BioDIMENSIONAL®<br/>Silicone-Filled BIOCELL® Textured<br/>Breast Implants, Style 153</b><br><br><b>Date[s] of Implant:</b><br><br><b>Date[s] of Explant (if any):</b>   | <input type="checkbox"/> <b>NATRELLE Dual-Gel Breast<br/>Implants</b><br><input type="checkbox"/> Style LX<br><input type="checkbox"/> Style MX<br><input type="checkbox"/> Style FX.<br><br><b>Date[s] of Implant:</b><br><br><b>Date[s] of Explant (if any):</b>  |
| <input type="checkbox"/> <b>NATRELLE Komuro Breast<br/>Implants</b><br><input type="checkbox"/> Style KML<br><input type="checkbox"/> Style KMM<br><input type="checkbox"/> Style KLL<br><input type="checkbox"/> Style RLM<br><br><b>Date[s] of Implant:</b><br><br><b>Date[s] of Explant (if any):</b> | <input type="checkbox"/> <b>NATRELLE Ritz Princess Breast<br/>Implants</b><br><input type="checkbox"/> Style RML<br><input type="checkbox"/> Style RMM<br><input type="checkbox"/> Style RFL<br><input type="checkbox"/> Style RFM<br><br><b>Date[s] of Implant:</b><br><br><b>Date[s] of Explant (if any):</b> |
| <input type="checkbox"/> <b>NATRELLE 150 Full Height and<br/>Short Height double lumen implants.</b><br><br><b>Date[s] of Implant:</b><br><br><b>Date[s] of Explant (if any):</b>  | <input type="checkbox"/> <b>NATRELLE 133 Plus Tissue<br/>Expander</b><br><br><b>Date[s] of Implant:</b><br><br><b>Date[s] of Explant (if any):</b>  |
| <input type="checkbox"/> <b>NATRELLE 133 Tissue Expander<br/>with Suture Tabs</b><br><br><b>Date[s] of Implant:</b><br><b>Date[s] of Explant (if any):</b>   | <input type="checkbox"/> <b>OTHER (Please describe):</b><br><br><b>Date[s] of Implant:</b><br><br><b>Date[s] of Explant (if any):</b>   |

**PLAINTIFF'S BIOCELL-RELATED INJURIES**

8. Plaintiff[s] allege that one or more Biocell devices caused personal injuries and damages including but not limited to the following:  
Physical pain and suffering, mental anguish, medical expenses, surgical costs of removal of the products, loss of enjoyment of life, lost wages, and ongoing medical monitoring costs
9. Approximate date of Biocell-device related injury:  
September 2019
10. Has Plaintiff or Plaintiff's decedent ever been diagnosed with BIA-ALCL:
- ☐ Yes
- ☒ No
- a. If Yes, date of diagnosis: \_\_\_\_\_

**CAUSES OF ACTION**

11. The following claims asserted in the *Master Complaint* are herein adopted by Plaintiff(s):

- ☒ Count I: Strict Liability – Manufacturing Defect
- ☒ Count II: Negligent Manufacturing
- ☒ Count III: General Negligence
- ☒ Count IV: Strict Liability Failure to Warn
- ☒ Count V: Negligent Failure to Warn
- ☒ Count VI: Negligent Misrepresentation
- ☒ Count VII: Breach of Implied Warranty of Merchantability
- ☒ Count VIII: Breach of Express Warranty
- ☒ Count IX: Strict Liability Design Defect
- ☒ Count X: Negligent Design
- ☐ Count XI: Survivorship and Wrongful Death
- ☐ Count XII: Loss of Consortium
- ☐ Count XIII: Punitive Damages
- ☒ Other claims and factual basis therefore:

Manufacturing defect, design defect, failure to warn, and breach of express warranty pursuant to La. R.S. § 9:2800.55 – 9:2800.58 based upon the facts alleged in the Master Complaint;

Redhibition: Under Louisiana law, the seller warrants the buyer against redhibitory defects, r vices, in the thing sold. La. C.C. 2520. Allergan sold and promoted BIOCELL textured implants, and BIOCELL textured implants possess a redhibitory defect because the products were not manufactured and marketed in accordance with industry standards and/or were unreasonably dangerous, as described in the Master Complaint, which renders the products useless or so inconvenient that it must be presumed that the buyer would not have brought the products had she known of the defect. Pursuant to La. C.C. 2520, Plaintiff is entitled to obtain a rescission of the sale of the products. BIOCELL textured implants alternatively possess a redhibitory defect because the products were not manufactured and marketed in accordance with industry standard and/or were unreasonably dangerous, as described in the Master Complaint, which diminishes the value of the products so that it must be presumed that a buyer would still have bought it but for a lesser price. In this instance, Plaintiff is entitled to a reduction in the purchase price of the products. As the manufacturer of the products, under Louisiana law, Allergan is deemed to know that BIOCELL textured implants possessed a redhibitory defect. La. C.C. art. 2545. Allergan is a bad faith seller for selling defective products with knowledge of the defects, and thus, is liable to Plaintiff for the price of the products, with interest from the purchase date, as well as reasonable expenses occasioned by the sale of the products, and attorney's fees. As a result of the redhibitory defects of Allergan's BIOCELL implants, Plaintiff has suffered damages and harm, including, but not limited to, personal injury, physical pain and suffering, mental anguish, medical expenses, surgical costs of removal of the products, loss of enjoyment of life, lost wages, and ongoing medical monitoring costs;

Medical monitoring: Medical monitoring is, to a reasonable degree of medical certainty, required to detect and properly diagnose BIA-ALCL in Plaintiff. This is particular important because BIA-ALCL is less likely to be fatal if diagnosed and treated early in the disease's progression.

### **OTHER DEFENDANTS**

12. Plaintiff(s) further bring claims against the following additional Defendants not named in the *Master Complaint*:

a. Additional Defendant(s):

Additional Defendant 1: \_\_\_\_\_

Additional Defendant 2: \_\_\_\_\_

Additional Defendant 3: \_\_\_\_\_

Additional Defendant 4: \_\_\_\_\_

b. Address(es) of Additional Defendants:

Address of Defendant 1: \_\_\_\_\_

Address of Defendant 2: \_\_\_\_\_

Address of Defendant 3: \_\_\_\_\_

Address of Defendant 4: \_\_\_\_\_

c. Short and Plain Statement of Factual Allegations against Additional Defendants:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

d. Claims asserted against Additional Defendants:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**WHEREFORE**, Plaintiff prays for relief and demands a trial by jury as set forth in the Plaintiffs' Master Personal Injury Long Form Complaint in MDL 2921 in the United States District Court for the District of New Jersey.

Date: October 2, 2020

/s/ Claire E. Berg  
Claire E. Berg (#37029)  
M. Palmer Lambert (#33228)  
GAINSBURGH, BENJAMIN, DAVID,  
MEUNIER & WARSHAUER L.L.C.  
2800 Entergy Centre  
1100 Poydras Street  
New Orleans, LA 70163  
Phone: (504) 521-7643  
Fax: (504) 528-9973  
[plambert@gainsben.com](mailto:plambert@gainsben.com)  
[cberg@gainsben.com](mailto:cberg@gainsben.com)  
*Counsel for Plaintiffs*